IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH.

F.A.O. No. 999 of 1993.
Date of Decision: September 22,2006.

Rupinder Kaur & Ors.

....**Appellants.**

through
Mr. N.S.Virk, Advocate

Versus

Amar Nath & Ors.

...**Respondents**
through
Mr. V.K.Kapur, Advocate.

CORAM:

HON'BLE MR. JUSTICE SURYA KANT.

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

SURYA KANT,J.

This appeal is directed against the order dated 5th December, 1992 passed by the Motor Accident Claims Tribunal, Patiala whereby the appellants' claim petition under Section 166 of the Motor Vehicles Act, 1988, has been dismissed.

[2]. Briefly stated the facts are that on 1st August, 1990 at about 5 PM, Harnek Singh (since deceased)aged 35 years, was going on a bicycle along with his wife – Rupinder Kaur (appellant No.1) from Nabha to his village Jasomajra. When they reached the revenue estate of village Kalsana situated on Chahal-Malewal link road, a scooter bearing No. PAN-4609 which was being driven by Amar Nath – respondent No.1 allegedly in a rash and negligent manner, came from behind and struck against the bicycle of

the deceased. The deceased fell down on the road and received injuries on his head and other parts of the body. He was immediately rushed to Rajendera Hospital, Patiala and was subsequently referred to Post Graduate Institute of Medical Education and Research, Chandigarh (for short `PGIMS') on 1st August, 1990 itself at about 10 PM where he died on 2nd August, 1990.

[3]. Alleging that the deceased was an agriculturist owning 100 Bighas of land and was running a milk dairy and a poultry farm and was earning Rs.3000/- per month, the appellants, who are widow and minor children of the deceased, filed the claim petition on November 9, 1990.

[4]. Upon notice, respondents No. 1 and 2 took the following stand in their written statement filed on 18th February, 1991:-

> "15. In reply to para 15 it is submitted that though the replying respondents have no liability to pay any compensation, yet if any is found then the vehicle being insured with respondent No.3 for the period 9.1.90 to 8.1.91, then the respondent No.3 is liable to indemnify the same in its entirety.
>
> 24. Para 24 of the petition is wrong and the same is denied. It is denied that the scooter was being driven rashly and negligently. <u>It is denied that the scooter struck against the deceased. In fact the accident took place due to the negligence of the deceased himself who was thus the author of the accident and i.e. why the police did not register any case in the matter".</u>
>
> (Emphasis applied)

[5]. The Insurance Company, i.e., respondent No.3 filed separate written statement and in para No.24 thereof it took the following stand:-

> "Para 24 of the petition is wrong and the same is denied. It is denied that any such accident took place. It is denied that scooter No. PAN 4609 caused any such accident. It is denied that the scooter was being driven rashly, negligently or struck against the cycle of the deceased.
>
> It is denied that the respondents 1 and 2 are clever persons or influential one or they connived with the police. In fact no accident having been taken place, so no report was lodged with the police by any one or the claimants. The entire allegations made in the claim petition are false. It is denied that the deceased was doing any such work or had any such income. The claim petition is false".

[6]. In addition, the Insurance Company also took a preliminary objection that the claim petition was filed in collusion with respondents No. 1 and 2 and for that reason, the Insurance Company pleaded that "it may be allowed to defend the petition on all the defences as available to respondents No. 1 and 2". The other preliminary objections, i.e., person driving the scooter was having no valid driving licence; the vehicle was not controlled and managed by the Insured and no intimation to the Insurance Company regarding the accident in question was sent, were also taken.

[7]. The Tribunal vide its impugned award, dismissed the claim petition due to the following alleged infirmities:-

(i) the accident took place on 1st August, 1990. However, the story propounded by the claimants' witnesses in their statement recorded on 24th September, 1992 had not seen the light of the day for a sufficient long period and was not believable;

ii) as per the averments made in Para 24 of the claim petition, the deceased was removed to Rajindera Hospital by Om Parkash and Dara but none of them has been examined as a witness. Raj Pal Singh (AW4), who is alleged to have witnessed the occurrence, does not find mention in the claim petition and was, thus, introduced afterwards;

iii) neither Raj Pal Singh nor Rupinder Kaur or Om Parkash and Dara sent any application/representation to the police authorities to register a case against Amar Nath- respondent No.1 nor they took any other step in that direction;

iv) not a single document has been brought from Rajendera Hospital, Patiala to show that the deceased was taken to that hospital for treatment;

v) neither any FIR nor any DDR was lodged in the police station;

vi) though appellant No.1 took the plea that she had also received multiple injuries in the accident but her medico legal report has not been placed on record and it can, thus, be safely presumed that she was not sitting on

the cycle which was being allegedly driven by her husband;

vii) appellant No.1 in her deposition does not mention that her husband was removed to Rajendra Hospital, Patiala;

viii) the explanation given by appellant No.1 for not reporting the matter to the police due to the alleged compromise made by respondent No.1 is unbelievable as if that were true then why she knocked at the door of the Court;

ix) no post-mortem report of the deceased has been produced and it is admitted by AW3 that no post mortem of the deceased was got conducted at PGI, Chandigarh;

x) Raj Pal Singh (AW4) can not be believed to have witnessed the accident;

xi) no intimation of the accident was sent to the Insurance Company by Amar Nath – respondent No.1 or any body else;

xii) no reliance can be placed on the statement of Dr.A.Pathak as he had not seen or operated upon the deceased personally".

[8]. Aggrieved, the claimants have filed this appeal.

[9]. I have heard learned counsel for the appellants as well as representing the Insurance Company and have perused the entire evidence.

[10]. In the light of the reasons given by the learned Tribunal to dislodge

the claim of the appellants, firstly, the evidence, if any, produced by the appellants to prove that the accident had actually taken place, may be scrutinized.

[11]. On a reading of paras No. 10, 12 and 24 of the claim petition, it comes out in unequivocal terms that according to the appellants, the accident had taken place on 1st August, 1990 at about 5 PM when the deceased along with his wife, namely, appellant No.1, was going to his village Jasomajra from Nabha on a bicycle. It is averred that the accident was caused by respondent No.1 (Amar Nath) who came from behind while driving scooter No.PAN-4609 in a rash and negligent manner. In Para no. 11 of the claim petition, it is specifically averred that the deceased received "head injuries". In Para no. 12, it has been categorically pleaded that the deceased was taken to "Rajendra Hospital, Patiala and subsequently transferred to PGI, Chandigarh.

[12]. In their written statement, respondents No. 1 and 2 have not denied the accident, though according to them it was caused due to negligence of the deceased himself. The Insurance Company, in its written statement, has taken an evasive plea firstly, of denying the accident and if the accident is proved, then it has disputed its liability. In addition,all sorts of pre-emptory preliminary objections, like, non-holding of Driving Licence or that the vehicle was not controlled and managed by the Insured "at the relevant time", have also been taken.

[13]. The fact that the deceased met with an accident is clinched by Ex.AW1/A which is Death Certificate-cum-Medical Record of PGI, Chandigarh. If one reads the said document, it undoubtedly proves that the deceased was brought to the said hospital on 1st August, 1990 at about 10

PM; he had received head injuries in an accident and he was operated upon in the Department of Neurology under the supervision of Dr.A.Pathak.

[14]. Coupled with the afore-stated medical record, is the statement of Dr. A.Pathak (AW1), Assistant Professor, Department of Neurology, PGI, Chandigarh. In his deposition, Dr. A. Pathak has categorically stated that Harnek Singh son of Bachan Singh was brought to the Emergency OPD of the PGI, Chandigarh on 1st August, 1990 and as per the history recorded by Junior Doctors in Emergency OPD, the patient had suffered injuries in a road accident at 5.30 PM on 1st August, 1990 near village Kalsana; that the patient was taken to Rajendera Hospital, Patiala initially from where he had been referred to PGI, Chandigarh. Dr. Pathak further deposed that on examination by the doctors of Neuro-Surgery Department, the patient had history of unconsciousness and there was respirated distress; there was no eye opening, no verbal response by the patient; there was no evidence of fracture of leg bones and skull or any haemotona; the patient was operated upon urgently and multiple exploratory burr holes were done by Dr. V.K.Batish working under Dr. Pathak; C.T.Scan was also done subsequently which showed interventricular blood and defused brain Oedema. The patient, however, succumbed to his injuries on 2nd August, 1990 at 1.50 PM and Death Certificate to this effect was issued by Dr.R.K.Mahajan, Senior Resident, whose signatures were duly identified by Dr.A.Pathak.

[15]. The cross-examination of Dr.Pathak is reproduced in *extenso* and reads as follows:-

> "I have seen the patient personally. We are not in possession of any post mortem report of the patient

because the dead body is sent to the mortuary and different department used to get the post mortem done. All medico legal cases are in routine sent to the Mortuary by the PGI authorities. I do not know the procedure as to whom the dead body is being handed over after post mortem because I have not conducted with that".

[16]. Then comes the statement of Rupinder Kaur – appellant NO.1 (AW3), who has reiterated the averments made in the claim petition. She has stated that her husband was taken to PGI, Chandigarh where about Rs. 20-25,000/- were spent on his treatment. The cross-examination of Rupinder Kaur (AW3) is reproduced as under:-

"No post mortem examination was got conducted at PGI of the deceased. I have not brought any receipt of the expenditure incurred on the treatment of my husband. I have not brought any record to show that my husband was owning 30/35 Kills of land. He was not income tax assessee. It is incorrect that I have not engaged any labour to see the work of my husband. It is incorrect that in fact no accident took place. It is incorrect that the present claim petition is collusive in between us and respondents No. 1 and 2. It is correct that now my in-laws are running the house-hold expenses after the death of my husband. It is incorrect that I have deposed falsely or that no accident took place on 1.8.1990".

[17]. Similarly, Raj Pal Singh (AW4), who is resident of village Fatehpur (and does not belong to the village of the deceased) has deposed that when he was working in his fields which are abutting the road where the accident took place, he saw that the deceased and his wife were coming on a cycle from the side of village Kalsana and Amar Nath (respondent No.1) came from behind on a scooter. He has further deposed that Amar Nath "was under the influence of liquor and was driving his scooter rashly and negligently without observing traffic rules". He struck against the cycle of Harnek Singh, as a result of which Harnek Singh and his wife fell down from the cycle. In his cross-examination, he has stated that Amar Nath also fell down from the scooter after the accident and he knew Amar Nath personally as he belongs to the adjoining village Jasso Majra.

[18]. From the above resume of pleadings, documentary as well as oral evidence, I am of the considered view that the findings returned by the Tribunal holding that no accident took place or that the deceased did not receive injuries in any such accident, are based only on conjectures, surmises and a result of over-looking the evidence on record. Each one of the reasons given by the learned Tribunal has no factual basis or legal rationale as can be seen from the following reasons:-

(i) according to the Tribunal, the story propounded by the claimants' witnesses saw the light of the day on 24th September, 1992 only their statements were recorded. The aforesaid reasoning is totally contrary to the record. The accident took place on 1st August, 1990 and Harnek Singh died on 2nd August, 1990. The claim petition was filed immediately after three months, i.e.,

on 9th November, 1990 and what is deposed on 24th September, 1992 is totally consistent with the averments made in the claim petition;

ii) The Tribunal's observation that Om Parkash and Dara who allegedly took the deceased to Rajendera Hospital have not been examined as witnesses, though correct, however, has over-looked that none of the respondents controverted the averments made in the claim petition that firstly the deceased was taken to Rajendera Hospital and from there he was referred to the PGIMS, Chandigarh. In the absence of any dispute over the said fact, the Tribunal ought not to have drawn any adverse inference against the claimants for not examining Om Parkash and Dara as witnesses.

(iii) So far as Raj Pal Singh (AW4) is concerned, it is well settled that the evidence is not required to be pleaded. No adverse inference, therefore, could be drawn merely because in the claim petition it was not averred that the accident was witnessed by Raj Pal Singh. One can not forget the fact that the claim was filed by the widow of the deceased hardly after three months of the accident and it may not be necessary that such like facts had been brought to her knowledge at the time of filing of the claim petition;

iv) as regards to non-representation to the police authorities, it may be mentioned here that appellant

NO.1 in her deposition has categorically stated that she was persuaded by respondent No.1 and other villagers for not registering a police case as respondent No.1 had assured her that he will pay a reasonable compensation. The claim petition, however, was filed when respondent No.1 did not pay any such compensation. She has not been even cross-examined on this aspect.

v) So far as non-production of any record of Rajendra Hospital, Patiala is concerned, The Tribunal appears to have misdirected itself. Firstly, reference may be made to para no. 12 of the claim petition where the claimants have specifically stated that the deceased was taken to Rajendera Hospital, Patiala and from there he was referred to the PGIMS, Chandigarh; secondly, it stands proved that the deceased was taken to the Emergency OPD, PGIMS, Chandigarh at about 10 PM on 1st August, 1990. If one takes notice of the distance between place of accident and Patiala, and from Patiala to Chandigarh and the fact that the accident had taken place at about 5.30 PM on that day, it stands fully explained that first of all the deceased must have been rushed to some other hospital before he was brought to PGIMS, Chandigarh. It further stands proved that the deceased was operated upon in the PGI where on account of precarious condition, he succumbed to his injuries on 2nd August, 1990. The medical record

(Ex.AW1/A) proves beyond any doubt that the deceased was brought to PGI, Chandigarh as an accidental case; was operated upon and died in the said hospital;

vi) Dr. Pathak is a neutral and impartial witness. Why would he falsely depose in favour of the claimants? The entire cross-examination of Dr. A.Pathak would bear it out that the reasons assigned by the learned Tribunal in favour of the respondents were never their defence and were not even put to Dr.Pathak or for that matter, appellant NO.1 in her cross-examination;

vii) The learned Tribunal has also taken serious note of some minor infirmities in the deposition of Raj Pal Singh (AW4), over-looking the fact that had it been a case of tutored witness, no such infirmities would have taken place;

viii) The learned Tribunal has not read and appreciated the statement of Dr. Pathak, especially his cross-examination and has wrongly concluded, without any basis, that no post-mortem of the deceased was conducted. Surprisingly, the Tribunal has drawn an adverse inference against the appellants because Amar Nath-respondent No.1 did not send any intimation of the accident to the Insurance Company. From the statement of appellant No.1 and AW4 (Raj Pal Singh) it

is apparent that they have made serious allegations against respondent No.1 including that he was under the influence of liquor when the accident was caused. It rules out the possibility of so-called collusion between them;

(ix) respondent No.1 might have attempted to hide the accident from the Insurance Company as he was persuading appellant No.1 not to get any case registered. Any intimation to the Insurance Company by respondent No.1 would have been treated as an evidence against him regarding causing an accident. What was, thus, manipulated by respondent No.1 to save himself, can not be allowed to work to the dis-advantage of the claimants.

[19]. For the reasons aforementioned and in view of the above discussion, I reverse the findings returned by the learned Tribunal under Issue No.1 and hold that the deceased Harnek Singh, son of Bachan Singh, died in a motor vehicular accident which took place on 1st August, 1990 which was caused due to rash and negligent driving of scooter No.PAN-4609 by Amar Nath-respondent No.1.

[20]. The next question which comes for consideration is as to what amount of compensation the appellants are entitled to? Though in the claim petition as well as in her statement, appellant NO.1 has deposed that the deceased was earning more than Rs.3000/- per month from agriculture, poultry farming and dairy farming, however, there is no cogent evidence in support of this averment. There is nothing on record to suggest that the

deceased was doing dairy farming or he had any poultry farm also. From the agricultural land, it can be safely inferred that the deceased must be earning not less than Rs.1200-1300/- per month at the relevant time. He had three minor children and old parents, apart from his widow, to maintain. In these circumstances, he must have been contributing a sum of Rs.1000/- per month i.e., Rs.12,000/- per annum, for the maintenance and looking after his family members.

[21]. As per the medical record (Ex.AW1/A), the deceased was 38 years old. In my view, multiplier of 15 would be just and reasonable to be applied in the present case. Consequently, it is held that the claimant-appellants are entitled to compensation of Rs.1,80,000/- (15x12=1,80,000/-). They shall also be entitled to interest @6% per annum from the date of filing of the claim petition till actual realization of the compensation amount.

[22]. This appeal is allowed in the manner fully indicated above.

September 22,2006. **(SURYA KANT)**
dinesh **JUDGE**